

FILED  
United States Court of Appeals  
Tenth Circuit

APR 13 1994

ROBERT L. HOECKER  
Clerk

**PUBLISH**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

---

UNITED STATES OF AMERICA, )

Plaintiff-Appellant, )

v. )

No. 93-2056

CARNO IAN PAYNE, )

Defendant-Appellee. )

---

Appeal from the United States District Court  
For the District of New Mexico  
D.C. No. CR-92-292-JP

---

Larry Gomez, United States Attorney, and Presiliano A. Torrez, Assistant U.S. Attorney, Albuquerque, New Mexico; and Kathleen A. Felton, Department of Justice, Washington, D.C., on the briefs for Plaintiff-Appellant.

Alan F. Zvolanek, Albuquerque, New Mexico, on the briefs for Defendant-Appellee.

---

Before MOORE, Circuit Judge, MCWILLIAMS, Senior Circuit Judge, and KELLY, Circuit Judge.

---

MOORE, Circuit Judge.

---

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

We conclude this appeal is governed by *United States v. Little*, \_\_\_\_ F.3d \_\_\_\_, No. 92-2155, 1994 WL 88834, at \*4-5 (10th Cir. Mar. 22, 1994) (en banc). The judgment of the district court<sup>1</sup> is REVERSED and REMANDED for further proceedings.

---

<sup>1</sup> See *United States v. Miller*, 811 F. Supp. 1485 (D. N.M. 1993).